

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

HEATHER NELSON,

Plaintiff,

v.

Civil Case No.: 3:11-cv-307

**SANTANDER CONSUMER USA, INC.,
PATRICK K. WILLIS, CO., INC. d/b/a
AMERICAN RECOVERY SERVICE, and
ASSETSBIZ CORP. d/b/a ABC RECOVERY,**

Defendants.

**PLAINTIFF'S MOTION IN LIMINE NO. 16 – MOTION IN LIMINE TO
PRECLUDE ALL DEFENDANTS FROM OFFERING EVIDENCE OF A BONA FIDE
ERROR DEFENSE UNDER THE FDCPA OR THE WCA**

Plaintiff moves the court to preclude all defendants from offering any evidence of a “bona fide error” defense available under the Fair Debt Collection Practices Act and the Wisconsin Consumer Act.

ARGUMENT

The FDCPA contains a defense to liability if the debt collector shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. 15 U.S.C. § 1692k(c). *Booth v. Collection Experts, Inc.* 969 F. Supp. 1161 (E.D. Wis. 1997) (bona fide error defense must be supported by evidence that there was an error *and* it was unintentional; not enough to show procedures to guard against errors). The Wisconsin Consumer Act provides an identical defense for liability under the WCA. Wis. Stat. § 425.301(3).

All defendants must be precluded from offering any evidence to support the bona fide error defense under either law because, in the case of Santander and American Recovery Service,

neither pled the defense in response to plaintiff's FDCPA claims and WCA claims. (See Santander Consumer USA, Inc.'s Amended Answer to Plaintiff's Second Amended Complaint; Dkt. 65, and Patrick K. Willis Company Inc.'s Answer to Plaintiff's Second Amended Complaint; Dkt. 51)

In the case of AssetsBiz, although it pled the defense in response to plaintiff's FDCPA claims (AssetsBiz Corp.'s Answer to Second Amended Complaint at 24;Dkt 53), its Rule 30(b)(6) representative testified that it made no mistakes in its dealings on plaintiff's account, thereby negating any basis it may have had for the defense. (February 12, 2013 Deposition of AssetsBiz Corporation's corporate designee Michael Terrault 80:18-24)

Plaintiff moves the Court to preclude defendants from offering any evidence of the bona fide error defense under the FDCPA or the WCA.

Respectfully submitted this 13th day of May, 2013.

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